IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 174 of 1995
with
CIVIL REVISION APPLICATION Nos.299 TO 302 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYRAM SOMABHAI
Versus
CHANDRAKANTABEN JAYANTILAL MODI

Appearance:
1. Civil Revision Application No. 174 of 1995
MR MS BHATT for Petitioner No. 1
MR SURESH M SHAH for Respondent No. 1,2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/03/2002

COMMON ORAL JUDGEMENT

As the common questions of facts are involved in all these civil revision applications, I intend to dispose of all these revision applications be way of common judgement,

2. These matters were reached for final hearing on 20th March, 2002 and when the matters were called out, considering the request made by Mr. Mahesh Prajapati for Mr. M.C. Bhatt, learned advocate for the petitioners and Mr. Shah, learned advocate for the respondent, matter was separately notified for final hearing on 21st March, 2002. On going through the revision application it appears that while issuing Rule on 6.2.1995 Mr. Shah appeared for the respondents on caveat and after hearing on the point of interim relief, all these matters were ordered to be placed for final hearing in the week commencing from 28th February, 1995 and the Court has ordered to maintain status quo as on that day i.e. 6.2.1995. Rule was made returnable on 28.2.1995. It seems from the order-sheet that the revision applications were not notified till 19.1.2001 and thereafter, the matters adjourned subsequently upto 23.2.2001.

3. The petitioner in Civil Revision Application No. 174/95, who is original plaintiff, had filed H.R.P. Suit No. 129/94 in the Court of the Small Causes Court, Ahmedabad praying for declaration and permanent injunction against the respondent defendants and as the premises in question is in his possession consisting of one room and oasari and the open space, the defendants be restrained not to disturb his possession and not to demolish any construction make thereon. In the said suit, the petitioner-plaintiff has filed application Ex. 5 for seeking injunction against the defendant. The said application Ex. 5 was resisted by the respondent and the respondent has denied the case put forward by the plaintiff and it is the case of the respondent that there are no relationship of landlord and tenant in respect of the suit premises between the plaintiff and the defendant and deceased father of the plaintiff was tenant of the room no. 114 and he was never a tenant of margin land and open land. He was only in occupation of room No. 114 and oata and further, the plaintiff is not the sole heir of deceased father and accordingly, such suit filed by the plaintiff is not maintainable and has also taken various contentions in respect of the case put forward by the plaintiff. The said application Ex. 5 was allowed by the learned trial Judge as per judgement and order dated 13th April, 1994 and ad-interim relief, which was granted earlier was made absolute till final disposal of the suit. While deciding application Ex. 5 the learned trial Judge has recorded finding in respect of all issues by holding that the plaintiff has made out prima-facie case as well as balance of convenience is in favour of the plaintiff and if the injunction is not granted then

irreparable injury will cause to the plaintiff.

3. Civil Revision Application No. 299/95 is also filed by original plaintiff, wherein, the petitioner-plaintiff has filed HRP suit No. 128/94 before the court of learned Small Causes Court, Ahmedabad and sought for declaration and permanent injunction seeking the similar reliefs against the respondent defendant and in the said suit, Ex. 5 application was also filed, wherein, the defendant-respondent has resisted the said suit and denied the case put forward by the plaintiff. It is the contention of the respondent defendant that the plaintiff is only tenant of one room and its oata and is not a tenant of open and margin lands and there was no relationship of landlord and tenant in respect of the open land and the court has no jurisdiction to entertain the said dispute. It is also the contention raised by the defendant that the plaintiff has previously filed HRP Suit No. 228/84, which was unconditionally withdrawn and hence the suit is barred by resjudicata. One of the contention was also raised that the plaintiff has made breach of terms of the tenancy and the plaintiff has in order to create false evidence has made encroachment and made kutchcha and pakka construction in the open land.

4. Civil Revision Application No. 300/95 is filed by the petitioner - plaintiff against the respondent defendant and the plaintiff has filed suit being H.R.P. Suit No. 131/94 before the learned trial Judge, Small Causes court, Ahmedabad for the similar relief namely for declaration and injunction against the defendant in respect of the suit property and same way Civil Revision Application No. 301/95 is filed by the petitioner plaintiff against the respondent defendant and the plaintiff has filed suit being H.R.P. Suit No. 132/94 before the learned trial Judge, Small Causes court, Ahmedabad for the similar relief namely for declaration and injunction against the defendant in respect of the suit property and CRA No. 302/95 is filed by the petitioner original plaintiff who has filed the suit for declaration and injunction in the Court of the Small Causes Court, Ahmedabad being H.R.P. Suit No. 130 of 1994 and in suit, application Ex.5 for injunction was filed by the plaintiff against the defendant. On behalf of the defendant, written statement was filed, denying the case put forward by the plaintiff and even it is the contention of the defendant that there was no relation of landlord and tenant in respect of the suit land.

5. As found from the order, the learned trial Judge

has partly allowed the application Ex. 5 in all the above suits. Being aggrieved by the said order, the respondent - original defendants have filed Appeal From Order in all the suits before the Appellate Bench of the Small Causes Court, Ahmedabad. As found from the order dated 29th December, 1994, the Appellate Bench of the Small Causes Court has partly allowed all appeals and the order of learned trial Judge dated 13.4.1994 is partly set aside and the injunction confirmed by the learned trial Judge with respect to room and osri as per the report of the Commissioner in each suit is confirmed. It is also observed in the order that the injunction with respect to the open land beyond room and osri described in respective report and map is vacated.

6. As found from the order passed by the appellate bench, the Appellate Court has while considering all the appeals had by common order had disposed of all the appeals as per judgement and order dated 29th December, 1994. This common order passed by the Appellate Court of the Appellate Bench of the Small Causes Court, the petitioner - original plaintiffs have filed these revision applications.

7. As found from the order passed by the learned trial Judge below Application Ex. 5 on an application filed by the present petitioner in suit, the learned trial Judge has after considering the contentions raised before him by the parties has confirmed the ad-interim relief granted earlier and the petitioner - plaintiff was protected in respect of his claim in the suit. When these matters were notified for admission and as observed earlier in the first matter being CRA No. 174 of 1995 after hearing the counsel for the parties had directed the parties to maintain status-quo as on the date of order i.e. 6.2.1995. The CRA Nos. 299/95 and others were notified subsequently and as per order dated 28.2.1995, all these revision applications were ordered to be heard with CRA No. 174/95 and the order of status-quo was ordered to be maintained by the parties.

8. Considering the fact that orders to notify the matters for final hearing on 28.2.1995 and as observed earlier, these matters were not notified till 19.1.2001 and even thereafter, the matters were adjourned from time to time. In all these matters suit filed by the plaintiff before the court of the small causes court were of 1994 namely HRP Suit No. 128/94, 129/94, 131/94 to 132/94 and 130/94 and when the maters were called out on the earlier occasion, I have directed the Registry to inquire in respect of progress made in respective suits

from the trial Court. Even as per the order passed by this Hon'ble Court while issuing Rule, the parties were directed to maintain status quo. As the appellant Court had while considering the appeals filed by the respondent defendant had partly allowed the appeals, wherein, injunction granted by the trial Court in favour of plaintiff was rejected in respect of suit room and oata and the rest of the injunction was vacated. It is pertinent to note that the High Court has while admitting the matters have directed the parties to maintain status quo, the court has to consider about the order passed by the appellate Court on an appeals filed by the respondent defendant. In view of the fact that after the order passed by the appellate court and as per the order passed by this court since 1995, the parties were ordered to maintain status quo and further when it is recorded by the Registry of this Court that all the suits filed by the petitioner plaintiff before the Court of the Small Causes Court, Ahmedabad were disposed of by court no. 13 on 16th September, 1999. It is further informed that all the suits filed by the plaintiffs were dismissed for default. Considering this back ground, this court is of the view that there is nothing survive in the present revision applications for which this court has to consider the order under challenge passed by the appellate court. In my view, when this court has to consider the challenge in the order after more than 7 years, even at the time of issuance of Rule, after hearing the advocates for the respondents, the court has directed the parties to maintain status-quo which is still in force. Further, as per the information received from the trail Court, all the suits filed by the plaintiffs were dismissed as back as on 16th September, 1999,. in this view of the matter, these revision applications are disposed of and the same are accordingly dismissed. Rule in each matter is hereby discharged. However, there shall be no order as to costs.

(D.K.Trivedi,J.)

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